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FROM: Maritza D. Kidd (650) 849-4800 (650) 849-4481
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PAGES: (INCLUDING THIS COVER PAGE): 5

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RE: Response after final Appl S/N: 09/156,952

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MESSAGE:

PLEASE DELIVER TO EXAMINER Dwayne Handy
Re: US Application Serial No. 09/156,952

I hereby certify that Amendment After Final (3 pages); and transmittal (1 page) is being submitted to the United States Patent and Trademark Office on the date above. Please confirm receipt via facsimile. Thank you.


 Maritza Kidd

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PA/E2153880.1

Docket No. 2024738-2247387003

CYM-025 (11.009011)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Roy A. Ostgaard, et al.

Serial No. 09/156,952

Filed: September 18, 1998

For: SAMPLE VIAL FOR USE IN
PREPARING CYTOLOGICAL SPECIMEN

Confirmation No.: 1770

Group Art Unit: 1743

Examiner: Dwayne K. Handy

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AMENDMENT AFTER FINAL TRANSMITTAL

Mail Stop AF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Transmitted herewith is an Amendment After Final (3 pages) to Office Action,
mailed January 11, 2005, for the above-identified application.Respectfully submitted,
BINGHAM McCUTCHEN LLP

Dated:

3-11-05

By:

David T. Burse
Reg. No. 37,104BINGHAM McCUTCHEN LLP
Three Embarcadero, Suite 1800
San Francisco, CA 94111-4067
Telephone: (650) 849-4400
Facsimile: (650) 849-4800CERTIFICATE OF FACSIMILE TRANSMISSION
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MAR 11 2005

Docket No. 2024738-2247387003
CYM-025 (11.009011)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	Confirmation No.: 1770
)	
Roy A. Ostgaard, et al.)	Group Art Unit: 1743
)	
Serial No. 09/156,952)	Examiner: Dwayne K. Handy
)	
Filed: September 18, 1998)	
)	
For: SAMPLE VIAL FOR USE IN)	
PREPARING CYTOLOGICAL)	
SPECIMEN)	

RESPONSE AFTER FINAL

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Response under 37 CFR 1.116
Expedited Procedure
Examining Group

Dear Sir:

This letter is responsive to the Final Office Action, dated January 11, 2005. Claims 1-8, 10, and 12-27 remain pending in this application, all of which stand rejected. Based on the following remarks, reconsideration and allowance of this application is respectfully requested.

The Examiner has maintained the rejection of claims 1-8, 10, and 12-27 under 35 U.S.C. §103 as being obvious over Brodner in view of Moore. Applicant maintains its traversal of this rejection, since neither Brodner nor Moore, alone or in combination, disclose, teach, or suggest the combination of elements required by these claims.

In particular, claim 1 requires the lower-most surface of the anti-rotation lug to extend radially outwardly from the body outer surface along a plane perpendicular to the body outer surface. However, anything that can be reasonably considered a lower-most surface on the Brodner element

OC/210493.1

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CYM-025 (11.009011)

56 does not extend radially outward from the outer body surface in a plane that is perpendicular to the body surface, and in the Final Office Action, the Examiner never states this. Instead, the Examiner seems to state that the point at which the element 56 extends away from the body constitutes the lower-most surface of the element 56. It is not very clear to Applicant how a point, which has no dimensions, can be considered a surface, which has two dimensions. If the Examiner means to say that the point is somehow transformed into a lower-most surface at the moment that it radially extends from the outer body surface, then that surface does not extend in a plane that is perpendicular to the outer body surface, since the lower-most surface immediately tapers from the moment that it extends from the body. If the Examiner means to say that the point itself lies in some arbitrary plane that is perpendicular to the outer body surface, then the point cannot be a surface. The Examiner cannot characterize a feature as being a surface for the purpose of establishing that the Brodner element 56 comprises a lower-most surface, but then not treat that feature as surface when it comes time to determine whether that feature extends in a plane perpendicular to the body surface. If the Examiner means to say something else, then Applicant respectfully requests clarification.

While Applicant appreciates the Examiner's attempt at clarifying the Final Office Action through the use of marked-up drawings, which were faxed over to Applicant's representative March 2, 2005, it is still unclear how the lower-most surface of the Brodner element 56 extends in a plane perpendicular to the outer body surface even in view of these drawings. The Examiner states that the circled element 56 in Figure 2 extends outward in the y-direction from the x-z plane at the moment the tapered part begins to extend from the side of the container. However, at the moment that the tapered part begins to extend from the container side, it becomes a tapered surface, and thus, does not extend in the y-direction, but rather off-axis from the y-direction. As such, it does not extend in a plane (the x-y plane in this case) that is perpendicular to the body surface.

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Thus, Applicant submits that claims 1-8, 10, and 12-27 are indeed patentable over the combination of Brodner and Moore, and as such, respectfully requests withdrawal of the rejection of these claims.

Based on the foregoing, reconsideration and allowance of the claims is respectfully requested. If the Examiner has any questions or comments regarding this amendment, the Examiner is requested to contact the undersigned at (650) 849-4400.

Respectfully submitted,

BINGHAM MCCUTCHEN LLP

Dated: 3/11/05By: David T. Burse
David T. Burse
Reg. No. 37,104

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